

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL T. HANKINS and SINCERE HANKINS, husband and wife, and MICHAEL WARD, SR. and KAREN E. WARD, husband and wife,

Plaintiffs.

V.

CITY OF TACOMA, a municipal corporation,
TACOMA POLICE DEPARTMENT, and
Tacoma Police Officers ROBERT BAKER,
JASON BROOKS, AND BRIAN S.
GARRISON,

Defendants.

Case No. C06-5099 FDB

ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT
ON TITLE VI CLAIMS

This civil rights action against the City of Tacoma and individual police officers stems from the alleged conduct of police officers occurring in a traffic stop and the alleged failure of the City of Tacoma to train and supervise the officers or investigate claims of misconduct. Out of this common nucleus of operative facts, Plaintiffs' assert numerous claims for violations of state tort law, federal law and constitutionally protected rights.

ORDER - 1

1 Before the Court is Defendants' motion for summary judgment on Plaintiffs' Title VI cause
2 of action. After having reviewed all materials submitted by the parties and relied upon for authority,
3 the Court is fully informed and hereby grants the motion for summary judgment and dismisses
4 Plaintiffs' Title VI claims.

5 **INTRODUCTION AND BACKGROUND**

6 On May 8, 2003, Tacoma Police Officer Robert Baker initiated a traffic stop on Plaintiff
7 Michael Hankins. Earlier in the day, Tacoma police officers had been advised of an armed robbery
8 that had occurred in Lacy, Washington. The officers were provided with the license number of a
9 green Cadillac that had been involved in the robbery. When Officer Baker first saw Michael
10 Hankins' vehicle, he recognized it as a dark-colored Cadillac. Officer Baker followed the vehicle in
11 an attempt to determine whether it was the green Cadillac involved in the robbery. As Officer Baker
12 caught up with the vehicle in the 2100 block of South J Street, he was able to determine it that it was
13 black, not green and that the license did not match that of the armed robbery vehicle. Although the
14 license number and color did not match the description of the robbery vehicle, Officer Baker ran the
15 license number through his mobile data computer to confirm the plates belonged to the vehicle.
16 Officer Baker continued to follow the vehicle until he received information reflecting that the plates
17 belonged to the vehicle, but were canceled. Officer Baker then initiated the traffic stop on Michael
18 Hankins for driving a vehicle with canceled license plates. This stop occurred in the area where
19 Officer Baker had initially commenced to follow Michael Hankins, who had circled around and come
20 back to his original location, across the street from the residence of his father-in law. Plaintiff and his
21 father-in law, Michael Ward, are African-Americans. Officer Baker knew where Michael Ward
22 resided.

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ORDER - 2

1 The accounts of what transpired after Officer Baker initiated the stop vary widely among the
2 parties.¹ Plaintiffs' account follows. Upon seeing Officer Baker activate the patrol lights, Michael
3 Hankins parked in front of his in-laws' residence where he knew there would be witnesses to what
4 transpired. Mr. Hankins then got out of his vehicle and Officer Baker got out of his patrol car and
5 swore at Mr. Hankins, telling him to get back in his vehicle. Mr. Hankins wife, Sincere, and a number
6 of others were in Michael Ward's yard observing what was transpiring. Officer Baker then told Mr.
7 Hankins to close the car door or he would shut it on his leg. Officer Baker then reached in with his
8 right arm and grabbed Mr. Hankins by the throat. Mr. Hankins could not breath and was gasping for
9 air. Officer Jason Brooks appeared displaying pepper spray and told Mr. Hankins to comply with
10 Officer Baker's commands. He did not spray Mr. Hankins. Officer Garrison then appeared, placed
11 his taser against Mr. Hankins chest and deployed a taser charge.

12 Plaintiff Michael Ward was at the scene and provides the following account. Mr. Ward saw
13 Officer Baker choking his son-in-law, Michael Hankins, and pleaded for the officers to stop their
14 assault on his son-in-law. Without warning Mr. Ward was pepper-sprayed by Officer Brooks and
15 then tasered by Officer Garrison.

16 Michael Hankins was charged with violation of the vehicle code for driving with cancelled
17 license plates and obstructing a police officer. The charges were ultimately dismissed. Michael
18 Ward was charged with assault. A jury trial found him not guilty.

19 An internal affairs investigation with respect to Officer Baker sustained allegations of
20 unsatisfactory performance and lack of courtesy as to Officer Baker. Allegations of excessive force
21 were not sustained. Allegations in respect to Officer Brooks and Officer Garrison for unsatisfactory
22 performance and lack of courtesy were determined to be unfounded and they were exonerated on

23
24 ¹Defendants concede that the differing accounts of what transpired preclude summary
25 judgment on the causes of action for the use of excessive force and false arrest, either on the merits
or the basis of qualified immunity.

1 allegations of excessive force.

2 In regard to the conduct of the municipal defendant, Plaintiffs assert that "Officer Baker has
 3 had numerous citizen complaints filed against him for excessive force, rudeness, profanity, and the
 4 like, most of which have not been sustained and very little, if any discipline meted out to him."
 5 Plaintiffs also cite to excerpts from a July, 1 2003 "Racial Profiling Data Collection Study Final
 6 Report"(racial profiling study) prepared for the City of Tacoma Police Department as establishing
 7 that "Tacoma Police Officers pulled over a disproportionate number of black drivers."

8 Plaintiffs assert claims for violations of Title VI of the Civil Rights Act, 42 U.S.C. § 2000d
 9 on the basis the City of Tacoma Police Department, a recipient of federal funding, is engaged in
 10 discriminatory practices in the form of racial profiling through the practice of targeting African-
 11 Americans in stops, detentions, interrogations and searches of residents of the Hilltop neighborhood
 12 of the City of Tacoma.

13 **SUMMARY JUDGMENT STANDARD**

14 A court must grant summary judgment if the pleadings and supporting documents, viewed in
 15 the light most favorable to the non-moving party, "show that there is no genuine issue as to any
 16 material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P.
 17 56(c); see also, Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). When considering a
 18 summary judgment motion, the evidence of the non-movant is "to be believed, and all justifiable
 19 inferences are to be drawn in his favor." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
 20 (1986). These inferences are limited, however, "to those upon which a reasonable jury might return
 21 a verdict." Triton Energy Corp. v. Square D. Co., 68 F.3d 1216, 1220 (9th Cir. 1995). Rule 56(c)
 22 mandates the entry of summary judgment against a party who, after adequate time for discovery, fails
 23 to make a showing sufficient to establish the existence of an element essential to that party's case,
 24 and on which the party will bear the burden of proof at trial. Celotex, at 322-23. Rule 56(e)
 25 compels the nonmoving party to "set forth specific facts showing that there is a genuine issue for
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1 trial" and not to "rest upon the mere allegations or denials of [the party's] pleading." The nonmoving
 2 party must do more than "simply show that there is some metaphysical doubt as to the material
 3 facts." Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986).
 4 There is no issue for trial unless there is sufficient evidence favoring the non-moving party.
 5 Anderson, at 249. Summary judgment is warranted if the evidence is "merely colorable" or "not
 6 significantly probative." Id. at 249-50.

7 **TITLE VI AND RACIAL PROFILING**

8 Title VI of the Civil Right Act provides that "[n]o person in the United States shall, on
 9 the ground of race, color, or national origin, be excluded from participation in, be denied the benefits
 10 of, or be subjected to discrimination under any program or activity receiving Federal financial
 11 assistance." 42 U.S.C. § 2000d. Private individuals may sue to enforce Title VI only in instances of
 12 intentional discrimination. Alexander v. Sandoval, 532 U.S. 275, 279-84 (2001). The entity
 13 involved must be engaged in intentional discrimination and be the recipient of federal funding.
 14 Rodriguez v. California Highway Patrol, 89 F. Supp.2d 1131, 1139 (N.D. Cal. 2000). To maintain a
 15 private right of action under Title VI, a plaintiff must prove that he was victimized by a "program or
 16 activity" that received federal funds. Buchanan v. City of Bolivar, Tennessee, 99 F.3d 1352, 1356
 17 (6th Cir. 1996). There must be a nexus between the alleged discriminatory conduct and the specific
 18 program to which federal funds were directed. David K. v. Lane, 839 F.2d 1265, 1275-76 (7th Cir.
 19 1988).

20 Thus, it must be determined whether Plaintiffs have evidenced intentional discrimination,
 21 specifically, that the City of Tacoma's actions were motivated by race and that race was a
 22 determining factor in the City's decisions. Plaintiff must also establish a nexus between the alleged
 23 discrimination (racial profiling) and the specific program that received federal funding. See, David
 24 K., at 1275-76.

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26 ORDER - 5

1 Plaintiffs assert that the City of Tacoma supported a custom of racial profiling of African-
2 Americans residing in the Hilltop neighborhood, thereby subjecting them to disparate treatment.
3 Where an officer has reasonable suspicion or probable cause to initiate a stop, a person alleging
4 racial profiling must prove the officer acted in a discriminatory manner and that the discrimination
5 was intentional. Bingham v. City of Manhattan Beach, 341 F.3d 939, 948 (9th Cir. 2003); Reese v.
6 Jefferson Sch. Dist. No. 14J, 208 F.3d 736, 740 (9th Cir. 2000). It is undisputed that the license
7 plates on Michael Hankins vehicle were canceled at the time of the traffic stop and thus, Officer
8 Baker had a reasonable basis to initiate the stop.

9 Allegations of racial profiling may be sufficient to survive a motion to dismiss. See,
10 Rodriguez v. California Highway Patrol, 89 F. Supp.2d 1131 (N.D. Cal. 2000). However, on a
11 motion for summary judgment, bare allegations unsupported by legally competent evidence do not
12 give rise to a genuine dispute of material fact.

13 After having ample opportunity to conduct discovery, Plaintiffs rely on statements in their
14 own deposition testimony and the results of the “study on racial profiling” to establish a claim of
15 racial profiling. Plaintiffs deposition testimony merely recite legal arguments and Plaintiffs’ belief
16 that the incident was the product of racial profiling. There are no facts based upon Plaintiffs’
17 personal knowledge that evidence a pattern or practice of racial profiling by the Defendants.

18 Plaintiffs’ selective references to the racial profiling study are insufficient evidence of
19 disparate treatment. This statistical study shows disparate impact within the City of Tacoma, but
20 does not show disparate treatment among similarly situated motorist of different races. Plaintiffs
21 must show not a disparity of motorists of each race stopped by police, but rather that the police
22 treated the defendants differently than other similarly situated motorists of another race. See, United
23 States v. Bass, 536 U.S. 862, 863-64 (2002); Anderson v. Cornejo, 355 F.3d 1021, 1023-1025 (7th
24 Cir. 2004) In the context of selective prosecution, the Ninth Circuit has held that data suggesting
25 more African-Americans are prosecuted federally does “not advance a defense of selective
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1 prosecution without further consideration of the sociological factors affecting the pattern of crime
2 and without a showing that similarly situated defendants of other races had been left unprosecuted.”
3 United States v. Turner, 104 F.3d 1180, 1185 (9th Cir. 1997). Here the class of similarly situated
4 individuals necessarily would include motorists present in the area where Defendant officers were
5 patrolling and that were subject to the possibility of a traffic stop for similar driving infractions. See,
6 Chavez v. Illinois State Police, 27 F. Supp.2d 1053, 1066-1067 (N.D. Ill. 1998). Plaintiffs’
7 statistical evidence fails this test.

8 On the issue of federal funding, Plaintiffs state that it is undisputed that the Tacoma Police
9 Department receives federal assistance, for example, through the federal Law Enforcement
10 Terrorism Prevention Program and the Department of Homeland Security grants. Plaintiffs have
11 failed, however, to establish a nexus between a program funded by these federal monies and the
12 alleged racial profiling. There is no evidence of how the Tacoma Police Department used its federal
13 money to target African-Americans residing in the Hilltop neighborhood. The record contains no
14 evidence that City of Tacoma used federal funds to increase the number of officers on patrol in the
15 Hilltop. Moreover, there is no evidence that any federal funds had any residual effect on law
16 enforcement in the Hilltop. Particularly, Plaintiffs have failed to show that the traffic stop of Michael
17 Hankins was made possible, in whole or in part, by federal funding.

18 In sum, there is insufficient support for the claim of a nexus between the City of Tacoma
19 Police Department’s federal funding and any alleged racial profiling. Defendants’ motion for
20 summary judgment on the Title VI claims, therefore, shall be granted.

21 **CONCLUSION**

22 For the reasons set forth above, the Defendant City of Tacoma and its Police Department are
23 entitled to summary judgment of dismissal of Plaintiffs’ Title VI claims in their entirety.

24

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26 ORDER - 7

1 ACCORDINGLY,

2 IT IS ORDERED:

3 Defendant City of Tacoma's Motion for Summary Judgment on Plaintiffs' Title VI claims

4 [Dkt. #47] is **GRANTED**, and these claims are dismissed, with prejudice.

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6 DATED this 26th day of February, 2007.

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9

10 FRANKLIN D. BURGESS

11 UNITED STATES DISTRICT JUDGE